

NOT FOR PUBLICATION

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX**

<b>CALEDONIA SPRINGS, INC.,</b>	)	
	)	
Plaintiff,	)	Case No. 96-111
	)	
v.	)	
	)	
<b>ROYAL INSURANCE CO. OF PUERTO RICO, INC.,</b>	)	
	)	
Defendant.	)	

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**ATTORNEYS:**

**Lee Rohn**  
St. Croix  
*For the plaintiff,*

**Douglas Capdeville**  
St. Croix  
*For the defendant.*

**MEMORANDUM**

Moore, C.J.

Pending before the Court are three motions: defendant's appeal of the Magistrate Judge's Order of March 20, 1998 ["March 20 Order"], defendant's appeal of the Magistrate Judge's Order of March 31, 1998 ["March 31 Order"] denying a stay of the March 20 Order, and plaintiff's motion for sanctions arising out of these two orders. The Court will grant the appeal of the March 20 Order and reverse in part; deny the appeal of the March 31 Order as moot; and deny the motion for sanctions as without merit.

Plaintiff Caledonia Springs, Inc. ["Caledonia"] is suing Royal Insurance Co. of Puerto Rico, Inc. ["Royal PR"] on an

insurance matter. Royal PR is a subsidiary of Royal International, evidently a British corporation which has not been named as a party. Caledonia seeks to depose Andrew Gentry, an employee of Royal International who was involved to some extent in the settling of Caledonia's claim. Mr. Gentry is a resident of Great Britain. The March 20 Order allowed Caledonia to depose Mr. Gentry. On March 27, Royal PR objected. On April 3, attorneys at the firm of Jones, Day, Reavis & Pogue, ["Jones Day"] acting on behalf of Mr. Gentry, advised counsel for Caledonia that her notice of deposition was ineffective due to Mr. Gentry's residence outside of the United States and that he was an employee of a non-party.

The Jones Day letter advised that Mr. Gentry "will not appear to give a deposition in this matter unless he is ordered to comply with a valid order of the English High Court that he should do so, pursuant to the Evidence (Proceedings in Other Jurisdictions) Act 1975 and the Hague Evidence Convention."

Plaintiff's counsel responded with a letter addressed to a "Mr. Day" at "Jonas Day" which admitted that "the Court does not have jurisdiction over Mr. Gentry," but which suggested that Jones Day "rethink [their] position." The letter went on to threaten fines, contempt, a requirement that Mr. Gentry come to the United States, and a sanction of the entry of default.

Jones Day responded to the letter on April 14, referring to the "threats contained in [plaintiff's counsel's] letter [as] both unfounded and offensive" a description this Court finds charitable. The letter also referred to a form subpoena served on Mr. Gentry which had been filled in by plaintiff's counsel captioned under the header "**United States District Court Knightsbridge District of London**" dated March 19. Jones Day pointed out that "[n]o such court exists," a point this Court, which does exist, can take judicial notice of.

As a sanction for this unprofessional conduct, the Court is inclined to bar plaintiff from attempting to depose Mr. Gentry. In fairness to the plaintiff, however, the Court must allow the facts to surface. It can quite fairly be said that Mr. Gentry is not an employee of a mere non-party, but that he was acting as either an employee of Royal PR in his involvement with this matter, or that Mr. Gentry's acts blurred the line between Royal PR and Royal International to the extent that, for these purposes, the latter can be considered an alter ego of the other.

Therefore, in the interest of fairness and judicial economy, plaintiff's counsel can depose Mr. Gentry pursuant to, and only pursuant to, the Hague Convention. If plaintiff's counsel chooses to depose Mr. Gentry, it will be at her expense and at a convenient time and place for Mr. Gentry. Finally, defense

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counsel and counsel for Mr. Gentry should provide a copy of its expenses in dealing with this matter to both the Court and plaintiff, who shall bear such costs.

An appropriate Order is attached.

**ENTERED this \_\_13\_ day of \_\_August\_\_, 1998.**

**For the Court**

\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**Chief Judge**

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<b>ROYAL INSURANCE CO. OF PUERTO RICO,</b>	)	
<b>INC.,</b>	)	
	)	
Defendant.	)	

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**ORDER**

For the reasons stated in the foregoing Memorandum, it is hereby

**ORDERED** that the appeal of the March 20 Order is **GRANTED** and the Order is reversed in part. The deposition may only be taken in conformity with this Order; and it is further

**ORDERED** that the appeal of the March 31 Order is **DENIED** as moot; and it is further

**ORDERED** that the motion for sanctions is **DENIED**; and it is further

**ORDERED** that plaintiffs shall pay the costs of defendants and Mr. Gentry incurred in this matter.

**ENTERED this \_\_13\_\_ day of \_\_August\_\_, 1998.**

**For the Court**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**Chief Judge**

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ATTEST:  
ORINN ARNOLD  
Clerk of the Court

By:\_\_\_\_/s/\_\_\_\_\_  
Deputy Clerk

cc: Hon. G.W. Barnard  
Mrs. Jackson  
Adam Farlow  
Lee Rohn  
Douglas Capdeville  
Jones Day, Reavis & Pogue  
fax in UK:0171-238-1113

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